

ORIGINAL

NEW APPLICATION



0000079419

BEFORE THE ARIZONA CORPORATION COMMISSION

**COMMISSIONERS**

Arizona Corporation Commission

MIKE GLEASON – Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

**DOCKETED**

DEC 18 2007

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KK

MM

ARIZONA CORPORATION COMMISSION

2007 DEC 18 P 12

RECEIVED

IN THE MATTER OF THE APPLICATION OF )  
UNS GAS, INC. FOR APPROVAL OF PROPOSED )  
SALES AND TRANSPORTATION )  
AGREEMENTS BETWEEN UNS GAS AND )  
UNISOURCE ENERGY DEVELOPMENT )  
COMPANY. )

DOCKET NO. G-04204A-07-

**G-04204A-07-0696**  
**E-04230A-07-0696**  
**APPLICATION**

UNS Gas, Inc. ("UNS Gas"), through undersigned counsel, hereby applies for approval of a proposed Interruptible Natural Gas Sales and Agency Agreement ("Sales Agreement") and a proposed Gas Transportation Agreement ("Transportation Agreement") between UNS Gas and UniSource Energy Development Company ("UED"); the Agreements are attached hereto as Exhibits A and B, respectively.<sup>1</sup> The proposed Sales and Transportation Agreements are for natural gas sales, and interstate and intrastate transportation to the Black Mountain Generating Station ("BMGS") located near Kingman, Arizona.

**I. BACKGROUND.**

UNS Gas is a public service corporation certificated to provide natural gas services to customers in Mohave, Yavapai, Coconino, Navajo and Santa Cruz Counties, Arizona, under the authority granted by the Arizona Corporation Commission ("Commission").

UED is an Arizona corporation and a subsidiary of UniSource Energy Corporation. UED is developing and will own the BMGS, a 90-MW simple cycle gas-fired generating station

<sup>1</sup> Confidential provisions have been redacted from the Agreements attached as Exhibits A and B. Unredacted Agreements will be provided to Commission Staff upon execution of a protective Agreement.

1 consisting of two GE LM6000 PC Sprint gas turbines with inlet chilling and associated equipment  
2 and accessories. BMGS will require natural gas, and interstate and intrastate transportation of that  
3 gas, in order to operate and generate electricity.

4 **II. AGREEMENT DESCRIPTIONS.**

5 The proposed Sales Agreement will commence on the first day of flowing gas to the  
6 BMGS and will continue for a twenty-year term. It is anticipated that test gas will start flowing in  
7 March of 2008. Gas pricing by UNS Gas to UED will be priced at the higher of the San Juan  
8 Daily or actual daily gas costs.

9 UNS Gas has entered into a long-term interstate transportation agreement with  
10 Transwestern Pipeline ("TW") on behalf of UED in order to transport UED's natural gas to the  
11 interconnection between UNS Gas and TW. The agreement with TW has set monthly capacity  
12 volumes and set monthly reservation charges. UNS Gas will invoice UED for all of the contracted  
13 reservation charges. If UNS Gas should need additional interstate transportation capacity for its  
14 core customers on the Transwestern pipeline, and UED is not utilizing all of its contracted  
15 capacity, UNS Gas will utilize the available capacity and UED will be credited for the amount  
16 used by UNS Gas. This is a benefit to UNS Gas' core customers in that a source of additional  
17 interstate transportation capacity is available without the core customers having to bear the  
18 associated reservation charges. Conversely, if UED should require additional interstate  
19 transportation capacity above its contracted volumes, UNS Gas will utilize any unused interstate  
20 transportation capacity reserved for core customers to transport UED's gas and invoice UED for  
21 that transportation. UNS Gas core customers will benefit in that the fixed transportation costs for  
22 the core customer load will be reduced.

23 The proposed Transportation Agreement will commence on the first day of flowing gas to  
24 the BMGS and will continue for a twenty-year term. UNS Gas has built a 16" distribution pipeline  
25 from its interconnection with TW to serve the BMGS, as well as other retail customers. UNS Gas  
26 will recover from UED approximately 82% of the capital cost of the distribution pipeline through  
27 a monthly transportation rate. Because the distribution pipeline has been sized to meet the

1 maximum pressure needs of the BMGS, core customers benefit because more capacity is available  
2 to serve core customer load.

3 **III. CONCLUSION.**

4 UNS Gas believes it is in the public interest to approve these Sales and Transportation  
5 Agreements.

6 WHEREFORE, for all of the forgoing reasons, UNS Gas respectfully requests that the  
7 Commission issue its order approving the proposed Sales and Transportation Agreements.

8  
9 RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of December 2007.

10 UNS GAS, INC.

11  
12 By



Michelle Livengood  
One South Church Avenue, Suite 200  
Tucson, Arizona 85701

14  
15 and

16 Michael W. Patten  
17 Roshka DeWulf & Patten PLC  
18 One Arizona Center  
400 East Van Buren Street, Suite 800  
19 Phoenix, Arizona 85004

20 Original and 13 copies of the foregoing  
21 filed this 18<sup>th</sup> day of December 2007 with:

22 Docket Control  
23 Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

24 Copy of the foregoing hand-delivered/mailed  
25 this 18<sup>th</sup> day of December 2007 to:  
26  
27

1 Lyn Farmer, Esq.  
2 Chief Administrative Law Judge  
3 Hearing Division  
4 Arizona Corporation Commission  
5 1200 West Washington  
6 Phoenix, Arizona 85007

7 Christopher C. Kempley  
8 Chief Counsel, Legal Division  
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10 1200 West Washington  
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12 Ernest G. Johnson, Esq.  
13 Director, Utilities Division  
14 Arizona Corporation Commission  
15 1200 West Washington  
16 Phoenix, Arizona 85007

17 By 

# EXHIBIT

"A"

**INTERRUPTIBLE NATURAL GAS SALES  
AND AGENCY AGREEMENT**

**BETWEEN**

**UNS GAS, INC.**

**AND**

**UNISOURCE ENERGY DEVELOPMENT COMPANY**

**DECEMBER 11, 2007**

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**INTERRUPTIBLE NATURAL GAS SALES  
AND AGENCY AGREEMENT**

**1. PARTIES**

The Parties to this Interruptible Natural Gas Sales and Agency Agreement (“Agreement”), dated December 13 2007, are UNS GAS, INC. (“UNS Gas”), an Arizona corporation, and UNISOURCE ENERGY DEVELOPMENT COMPANY (“UED”), an Arizona corporation. UNS Gas and UED are collectively referred to herein as “Parties” or singularly as a “Party.”

**2. RECITALS**

UNS Gas is a public service corporation, duly organized and existing under the laws of the State of Arizona, engaged in the provision of public utility gas service; and

Whereas, UED is the developer and owner of a 90 MW simple cycle gas-fired generating station located near Kingman, Arizona and known as the Black Mountain Generating Station (“BMGS”), which requires natural gas and interstate transportation, as well as transportation over the UNS Gas distribution system, in order to operate and generate electricity;

Whereas, UNS Gas and UED currently have a Gas Transportation Agreement (“Transportation Agreement”) in effect;

Whereas, UNS Gas and UED desire to enter into an Agreement for gas sales service with terms and conditions as subsequently described.

Now therefore, the Parties agree as follows:

**3. DEFINITIONS**

Arizona Corporation Commission: The regulatory authority of the State of Arizona having jurisdiction over public service corporations.

Receipt Point: The interconnection between UNS Gas and the upstream pipeline where UNS Gas receives UED’s gas for the account of UED.

Rules and Regulations: The standard Rules and Regulations of UNS Gas that apply to gas service furnished by UNS Gas to its customers, as on file with the ACC, which may change from time to time.

Lost and Unaccounted for Gas Percentage or “L&U”: The L&U percentage is determined by the difference between volumes received at all UNS Gas Receipt Points and the volumes delivered to all UNS Gas Delivery Points on its gas pipeline system.

**4. TERM**

**4.1 Term and Effective Date**

The term of this Agreement (“Term”) shall commence on the first day of flowing gas to BMGS, and continue for a term of twenty (20) years. If a notice to terminate pursuant to Section 4.3 has been made, in no event shall the Agreement be terminated before the last purchase date set forth in any Exhibit A to this Agreement.

**4.2 Extension of Term**

If UED desires to extend the term of this Agreement after the initial term, UED will provide written notice thereof to UNS Gas at least 180 days prior to the expiration of such term and the Parties will negotiate in good faith to amend this Agreement as necessary to facilitate extension for another term.

**4.3 Termination**

Subject to UED’s right to extend as set forth in Section 4.2, in the event that either Party at the end of the initial or any extended term desires to terminate this Agreement, it may do so by giving the other Party not less than one-hundred eighty (180) days advance written notice prior to the effective date of termination.

**5. EFFECT OF GOVERNMENTAL MANDATES**

**5.1 Effect of Governmental Mandates**

Should the Federal Energy Regulatory Commission (“FERC”), the ACC or any other regulatory or successor governmental agency having jurisdiction, impose by rule, order or regulation any terms or conditions upon or related to this Agreement that are materially disadvantageous to one or both of the Parties and substantially deprive one or both of the Parties of the benefits of this Agreement, then the Parties will negotiate in good faith to amend the Agreement so as to preserve, to the greatest extent practicable, each Party’s respective economic expectation. If the amendment requires ACC approval, UNS Gas will expeditiously file the amendment with the ACC for its approval. If these negotiations are unsuccessful, then either Party upon written notification to the other Party, may terminate this Agreement, subject to the satisfaction of any obligations(s) which have accrued before the date of termination, including monies owed or gas supplies in transit.

Governmental mandates that result in additional costs to UNS Gas will immediately be passed on to UED

**6. SALES QUANTITY OF GAS**

**6.1 Quantity**

UNS Gas will supply natural gas to UED at the Receipt Point as specified in Exhibit A to the Transportation Agreement. Upon request by UNS Gas, UED will submit its best estimates of the daily, monthly and annual volumes of gas it will need.

The gas delivered under this Agreement shall be the quantity as metered by UNS Gas for transportation to UED's Delivery Point that is specified in Exhibit A of the Transportation Agreement. Such quantities shall be adjusted to reflect UNS' Gas L&U in accordance with the Transportation Agreement.

**6.2 Quality**

The gas delivered by UNS Gas pursuant to this Agreement shall comply with the quality provisions of the upstream pipeline as set forth in its respective tariff on file with the Federal Energy Regulatory Commission ("FERC").

The gas supply to be delivered by UNS Gas under this Agreement is interruptible.

**6.3 Agency**

UNS Gas shall act as UED's agent for the limited purpose of scheduling and balancing the natural gas delivered to UED's facilities under the Transportation Agreement. UED must communicate to UNS Gas in a timely manner if there are any anticipated or unplanned changes in its natural gas requirements to serve its facilities under the Transportation Agreement. If UED fails to inform UNS Gas of such changes, UED will pay any resulting penalties.

**7. TITLE**

Title to all gas shall pass from UNS Gas to UED at the Receipt Point.

**8. GAS PRICING**

9. **OTHER COSTS**

If any additional costs are incurred by UNS Gas as a result of UED's actions or failure to act in connection with the purchase and sale of gas hereunder, then UED shall pay such costs.

10. **BILLING AND PAYMENTS**

10.1 **Statement and Payment**

UNS Gas shall provide UED with a billing statement showing the volumes in therms delivered to the Receipt Point during the preceding month. Payment by UED to UNS Gas shall be due within twenty (20) days of the billing. Amounts not paid on or before the due date shall be payable with interest accruing at the rate of one and one-half percent (1.5%) per month. In the event that a portion of any bill is in dispute, the undisputed amount shall be

paid when due, and the remainder, if any, shall be paid upon determination of the dispute, with interest accruing at the rate of one and one-half percent (1.5%) per month from the due date of the payment.

## **10.2 Creditworthiness and Financial Assurance**

Each Party shall reasonably satisfy the credit requirements of the other Party and will provide to the other Party periodically during the Term, if requested in writing, such financial or other information as may be necessary for such other Party to conduct a credit review. When reasonable grounds for insecurity of payment or performance by a Party arise, the other Party may demand assurance of performance. Such assurances may include, but are not limited to, a prepayment, a standby letter of credit, a performance bond or a parent guaranty, each in form and substance reasonably satisfactory to the Party requiring the same.

## **11. FORCE MAJEURE**

If any Party is prevented in whole or in part from performing its obligations under this Agreement by “uncontrollable forces” during the course of such event or cause, the Party so prevented shall be excused from whatever performance is affected by such event or cause; provided that such Party provides prompt written notice to the other Party of such condition.

The term “uncontrollable force” is defined as any cause beyond the control of the Party affected, including but not restricted to failure of, or threat of failure of, facilities, flood, drought, earthquake, storm, fire, lightning, epidemic, war, terrorism, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or non-action by or failure to obtain the necessary authorization or approvals from any governmental agency or authority which by exercise of due diligence or reasonable care such Party could not have avoided. No Party shall, however, be relieved of liability for failure of performance if such failure is due to causes arising out of its own negligence or willful misconduct or due to removable or remediable causes that it fails to remove or remedy within a reasonable time period. Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it may be involved.

In no event shall the inability to make payment or the unavailability of funds be considered an event of uncontrollable forces or force majeure.

## **12. HOLD HARMLESS PROVISION**

### **12.1 UniSource Energy Development Company**

UED shall be indemnify and hold harmless UNS Gas from, and against any claims for damage or injury to third persons or the property of third persons arising in any way out of the negligence or willful misconduct of UED in the construction, operation and maintenance of BMGS or the performance by UED of its obligations under this Agreement.

## **12.2 UNS Gas, Inc.**

UNS Gas shall indemnify and hold harmless UED from, and against any claims for damage or injury to third persons or the property of third persons arising in any way out of the negligence or willful misconduct of UNS Gas in the construction, operation and maintenance of any facilities of UNS Gas contemplated by this Agreement, or the performance by UNS Gas of its obligations under this Agreement.

## **13. ASSIGNMENT**

### **13.1 Right to Assign**

This Agreement and the Parties' interests hereunder shall not be assignable or transferable by any Party without the prior written consent of the other Party, which consent will not be unreasonably withheld. No consent shall be required in the event of (a) a transfer by either Party to any company that shall succeed by purchase, merger or consolidation or (b) other transfer of substantially all of such Party's assets or (c) a transfer by UED or UNS Gas to a wholly owned subsidiary or to any other affiliate, or (d) any assignment to any lender as collateral security for UED's obligations under any financing documents UED may enter into with such lenders. UNSG acknowledges that upon an event of default by UED under any financing documents relating to BMGS, any of the lenders may (but shall not be obligated to) assume, or cause its designee or a new lessee or purchaser of BMGS to assume, all of the interests, rights and obligations of UED thereafter arising under this Agreement. In the event that the rights and interests of UED in this Agreement and BMGS are assumed, sold or transferred as hereinbefore provided, and the assuming party agrees in writing to be bound by and to assume, the terms and conditions hereof, UED shall be released from any liability hereunder. Notwithstanding any such assumption by any of the lenders or a designee thereof, UED shall not be released and discharged from and shall remain liable for any and all obligations to UNS Gas arising or accruing hereunder prior to such assumption. The provisions of this Section 13.1 are for the benefit of the lenders as well as the Parties hereto, and shall be enforceable by the lenders as express third-party beneficiaries hereof. UNS Gas hereby agrees that none of the lenders shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of UED or shall have any obligation or liability to UNS Gas with respect to this Agreement except to the extent any of them become a party hereto pursuant to this Section 13.1 or Section 13.2 provided that the transferee agrees in writing to be bound by the terms of this Agreement. In the event of a transfer under clause (c), the transferor shall be released from liability under this Agreement if the transferee agrees in writing to be bound by the terms of this Agreement and the non-transferring Party is reasonably satisfied that the transferee is at least as creditworthy as the transferor.

### **13.2 Financing Liens**

Each of UNS Gas and UED may, without the approval of any Party, grant one or more mortgages (including one or more deeds of trust or indentures) on or security interests in its interest under this Agreement for the purposes of financing the construction, ownership

and/or operation of BMGS, or if otherwise required to do so under the terms of a mortgage or indenture to which it is or becomes a party in connection with the general financing of its assets or operations.

### **13.3 Binding Effect**

In the event of assignment of this Agreement as herein provided, the terms and conditions of this Agreement shall be binding upon the assignees hereof. This Agreement shall also be binding upon the respective Parties, and their successors in the name or entity, on and after the effective date hereof.

## **14. INTERPRETATION**

### **14.1 Prior Negotiation**

This Agreement constitutes the entire understanding and commitment of the Parties hereto and shall supersede all prior offers, negotiations and agreements, relative to service under this or any other rate schedule(s).

### **14.2 Descriptive Headings**

All descriptive heading contained in this Agreement are intended only as guideline to the content hereof and shall not be binding with respect to the interpretation of any provision of this Agreement.

### **14.3 Conflicts**

To the extent of any inconsistency between the provisions of this Agreement and any schedule, rider or exhibit incorporated in this Agreement by reference or otherwise, or any of UNS Gas' Rules and Regulations, the provisions of this Agreement shall control.

## **15. REMEDIES**

### **15.1 Breach**

Subject to Section 10.2 with respect to payment defaults, in the event of breach of any term or obligation of this Agreement by any Party that remains uncured within a reasonable period of time following notice of such breach, the non-defaulting Party shall have the right to terminate the Agreement or take any other action or seek any other remedy available in law or equity.

### **15.2 Dispute Resolution**

In the event of a dispute under this Agreement, the Parties involved in this dispute will first seek to resolve the dispute through discussions between UNS Gas' representative and the appropriate UED representative. If the Parties' representatives are unable to resolve the dispute within thirty (30) calendar days, or longer if the Parties mutually agree, the matter will be submitted for resolution to the Parties' authorized representatives who have authority

to act on behalf of their respective companies with respect to the subject matter of the dispute.

If such authorized representatives are unable to resolve the dispute within thirty (30) calendar days after their initial meeting or conference (or within such longer time as may be mutually agreed upon by the respective representatives), the Parties may pursue any remedies available to them at law, in equity or under this Agreement to resolve the dispute, including alternate dispute resolution processes.

### **15.3 Limitation of Remedies**

In no event shall either Party be liable for indirect, special, incidental, consequential or punitive damages of any kind, including without limitation, lost profits whether in contract, tort or strict liability.

### **15.4 Waiver**

Failure or delay on the part of any Party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof.

## **16. GOVERNING LAW**

This Agreement shall be interpreted, governed by and construed under the laws of the State of Arizona, without regard to the conflict of laws provision thereof.

All matters not stipulated in this Agreement shall be governed by the terms and conditions for service, as identified within UNS Gas' Rules and Regulations, which are on file with the ACC and which may be modified from time to time.

## **17. NO THIRD PARTY RIGHTS**

Except as otherwise specifically provided in Section 13 of this Agreement, the Parties do not intend to create any duty, covenant, obligation or undertaking to or to create any rights in or to grant any remedies to any third party as a beneficiary of this Agreement or of any of the rights and obligations established hereunder.

## **18. AMENDMENT AND MODIFICATION**

No amendment or modification of this Agreement shall be valid and binding unless made in writing and signed by the Parties.

## **19. SEVERABILITY**

In the event any provision or portion of a provision of this Agreement is invalid and/or unenforceable under present or future laws, or is declared void, invalid and/or unenforceable by a court of competent jurisdiction or an authorized governing entity, such provision or portion shall be deemed severed from this Agreement, which shall otherwise remain in full force and effect.



20. **NOTICE**

For purposes of any notification contemplated to be given by or to either Party under this Agreement, the following shall constitute the appropriate address for delivery of such notice:

To UNS Gas:

Theresa Mead  
Lead Analyst, Pipeline System Planning  
P. O. Box 711, SC115  
3950 E. Irvington Rd.  
Tucson, Arizona 85702

Gary A. Smith  
Vice President & General Manager  
2901 West Shamrell Blvd.  
Suite 110  
Flagstaff, Arizona 86001

To UniSource Energy Development Company:

Thomas A. McKenna  
Vice President  
4350 E. Irvington Rd.  
Tucson, Arizona 85714

Secretary and Legal Counsel  
c/o UniSource Energy Corporation  
1 South Church Avenue, Suite 100  
Tucson, Arizona 85701

The Parties indicate their understanding of and agreement to all of the above terms and conditions by signing where designated below.

**UNS GAS, INC.**

By: 

Name: David G. Hutchens

Title: Vice President

Date: 12-12-07

**UNISOURCE ENERGY DEVELOPMENT COMPANY**

By:

*T.A. McKenna*

Name:

THOMAS A. MCKENNA

Title:

VICE PRESIDENT

Date:

12/13/07

EXHIBIT

"A"

CONFIDENTIAL



EXHIBIT

"B"

**GAS TRANSPORTATION AGREEMENT**

**BETWEEN**

**UNS GAS, INC.**

**AND**

**UNISOURCE ENERGY DEVELOPMENT COMPANY**

**TRANSPORTATION OF CUSTOMER-SECURED NATURAL GAS**

**December 11, 2007**

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## **GAS TRANSPORTATION AGREEMENT**

### **1. PARTIES**

The Parties to this Gas Transportation Agreement ("Agreement"), dated December 13 2007, are UNS GAS, INC. ("UNS Gas"), an Arizona corporation, and UNISOURCE ENERGY DEVELOPMENT COMPANY ("UED"), an Arizona corporation. UNS Gas and UED are collectively referred to herein as "Parties" or singularly as a "Party."

### **2. RECITALS**

Whereas, UNS Gas is a public service corporation, duly organized and existing under the laws of the State of Arizona, engaged in the provision of public utility gas service; and

Whereas, UED is the developer and owner of a 90 MW simple cycle gas-fired generating station located near Kingman, Arizona and known as the Black Mountain Generating Station ("BMGS"), which requires the transportation of natural gas over the UNS Gas distribution system in order to operate and generate electricity;

Whereas, UNS Gas has constructed and will own and operate the intrastate pipeline, metering, control and interconnection facilities ("Pipeline") between BMGS and the interstate natural gas pipeline owned by Transwestern Pipeline Company ("Transwestern").

Whereas, this Agreement is for intrastate gas transportation service to be provided to BMGS located in Mohave County, and

Whereas, UNS Gas and UED desire to enter into an Agreement with terms and conditions as subsequently described and in accordance with UNS Gas' Rules and Regulations, on file with the Arizona Corporation Commission ("ACC") and as may be modified from time to time;

Now therefore, the Parties agree as follows:

### **3. DEFINITIONS**

Arizona Corporation Commission: The regulatory authority of the State of Arizona having jurisdiction over public service corporations.

Delivery Point: Point of delivery for all gas delivered to UED at the point of interconnection between the facilities of UNS Gas and those of UED.

Dekatherm or "DTH": Ten (10) therms or 1,000,000 BTU

Lost and Unaccounted for Gas Percentage or “L&U”: This percentage is determined by the difference between volumes received at all UNS Gas Receipt Points and the volumes delivered to all UNS Gas Delivery Points on its gas pipeline system.

Maximum Daily Quantity or “MDQ”: The maximum amount of natural gas UNS Gas agrees to receive from UED or UED’s agent at the Receipt Point on a daily basis.

Payment in Kind: Payment in the form of commodity gas delivered to the Receipt Point, rather than cash, to cover that volume of lost and unaccounted for gas requirements of UNS Gas for the delivery of gas under this Agreement.

Receipt Point: The interconnection between UNS Gas and the upstream pipeline where UNS Gas receives UED’s gas for the account of UED.

Rules and Regulations: The standard Rules and Regulations of UNS Gas that apply to gas service furnished by UNS Gas to its customers, as on file with the ACC, which may change from time to time.

#### **4. TERM**

##### **4.1 Term and Effective Date**

The term of this Agreement (“Term”) shall commence on the first day of flowing gas to BMGS, and continue for a term of twenty (20) years.

##### **4.2 Extension of Term**

If UED desires to extend the term of this Agreement after the initial Term, UED will provide written notice thereof to UNS Gas at least 180 days prior to the expiration of such term and the Parties will negotiate in good faith to amend this Agreement as necessary to facilitate extension for another term. The methodology utilized to establish the monthly transportation rate for any extended term will be the same as that set forth in Exhibit C, based upon the net investment required to serve BMGS. If and to the extent that UNS Gas reasonably believes that additional investment is required to be made in order to serve BMGS during the Term (including any renewal term) of this Agreement, it will provide reasonable notice to UED and opportunity to discuss and comment on such proposed investment.

##### **4.3 Termination**

Subject to UED’s right to extend as set forth in Section 4.2, in the event that either Party at the end of the initial or any extended term desires to terminate this Agreement, it may do so by giving the other Party not less than one-hundred eighty (180) days advance written notice prior to the effective date of termination.

## **5. TRANSPORTATION**

### **5.1 Receipt Point**

Subject to the terms, conditions and limitations set forth in this Agreement, UNS Gas agrees to receive from UED, for UED's use, up to the MDQ of natural gas set forth in Exhibit A, adjusted for applicable lost and unaccounted for gas percentage. UNS Gas will receive this natural gas for transportation at the Receipt Point set forth in Exhibit A.

### **5.2 Delivery Point**

At UED's request, UNS Gas shall transport the equivalent quantity of gas through its pipeline system, and deliver the equivalent quantity of gas to UED for UED at the Delivery Point, delivery pressures, assumed atmospheric pressures, and maximum quantities per day as described in Exhibit A. UNS Gas shall not be obligated to receive and/or transport quantities of gas in excess of the MDQ.

### **5.3 Firm Service**

Transportation service is firm and uninterruptible except for the following:

- a. Curtailment in accordance with the UNS Gas' curtailment priority procedures as set forth in the Rules and Regulations;
- b. When UNS Gas determines it has insufficient capacity on its system or from its upstream pipeline and such insufficiency is not directly attributable to UNS Gas knowingly taking action that created the insufficiency (other than in the event of an emergency, uncontrollable force or other similar circumstance); or
- c. UED's gas supply to UNS Gas is insufficient to meet its requirement.

## **6. OPERATING PROCEDURES**

### **6.1 Title to Gas**

By executing this Agreement, UED is certifying that UED or UED's agent has or will have title to the gas to be delivered to UNS Gas for transportation and has entered into or will enter into those arrangements necessary to assure all upstream transportation will be in place prior to the commencement of service under this Agreement.

### **6.2 Telemetry**

Telemetry facilities on each meter will be installed by UNS Gas at UED's expense. UED shall provide a dedicated telephone line for UNS Gas' use in communicating with the telemetry facilities and will pay any and all costs associated with that phone line.

7. **PRICES AND CHARGES**

**8. BILLING AND PAYMENTS**

**8.1 Payment**

UNS Gas shall deliver a billing statement to UED on or before the tenth day of each month following the month in which UED takes gas deliveries from UNS Gas in accordance with this Agreement. All bills for services hereunder shall become due and payable in good funds by UED as applicable, within twenty (20) calendar days after the date on which the statement is received by UED. Amounts not paid on or before the due date shall be payable with interest accruing daily at the rate of one and one-half percent (1.5%) per month. The first billing statement shall be delivered by UNS Gas on or before the tenth day following the month in which UED initiates delivery of gas by UNS Gas.

**8.2 Creditworthiness and Financial Assurance**

Each Party shall reasonably satisfy the credit requirements of the other Party and will provide to the other Party periodically during the Term, if requested in writing, such financial or other information as may be necessary for such other Party to conduct a credit review. When reasonable grounds for insecurity of payment or performance by a Party arise, the other Party may demand assurance of performance. Such assurances may include, but are not limited to, a prepayment, a standby letter of credit, a performance bond or a parent guaranty, each in form and substance reasonably satisfactory to the Party requiring the same.

**9. REGULATORY REQUIREMENTS**

**9.1 Arizona Corporation Commission**

This Agreement is subject to the prior approval of the ACC. If the ACC does not approve this Agreement as written or otherwise to the satisfaction of the parties, it will be void and of no further force and effect. After the ACC has approved this Agreement, neither Party will apply to the ACC to alter the rates set forth in this Agreement unless mutually agreed.

## **9.2 Other Authorities**

This Agreement, and the respective obligations of the Parties hereunder, are subject to all valid laws, orders, rules and regulations of duly constituted authorities have jurisdiction over the subject matter of this Agreement.

## **9.3 Effect of Regulatory Mandates**

Should the Federal Energy Regulatory Commission (“FERC”), the ACC or any other regulatory or successor governmental agency having jurisdiction, impose by rule, order or regulation any terms or conditions upon or related to this Agreement that are materially disadvantageous to one or both of the Parties and substantially deprive one or both of the Parties of the benefits of this Agreement, then the Parties will negotiate in good faith to amend the Agreement so as to preserve, to the greatest extent practicable, each Party’s respective economic expectation. If the amendment requires ACC approval, UNS Gas will expeditiously file the amendment with the ACC for its approval. If these negotiations are unsuccessful, then either Party upon written notification to the other Party, may terminate this Agreement, subject to the satisfaction of any obligations(s) which have accrued before the date of termination, including monies owed or gas supplies in transit.

## **10. FORCE MAJEURE**

### **10.1 Inability to Perform**

If any Party is prevented in whole or in part from performing its obligations under this Agreement by “uncontrollable forces” during the course of such event or cause, the Party so prevented shall be excused from whatever performance is affected by such event or cause; provided that such Party provides prompt written notice to the other Party of such condition.

The term “uncontrollable force” is defined as any cause beyond the control of the Party affected, including but not restricted to failure of, or threat of failure of, facilities, flood, drought, earthquake, storm, fire, lightning, epidemic, war, terrorism, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or non-action by or failure to obtain the necessary authorization or approvals from any governmental agency or authority which by exercise of due diligence or reasonable care such Party could not have avoided. No Party shall, however, be relieved of liability for failure of performance if such failure be due to causes arising out of its own negligence or willful misconduct or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it may be involved.

However, in no event shall the inability to make payment or the unavailability of funds be considered an event of uncontrollable forces or force majeure.

## **10.2 Duty of Reasonable Diligence**

When any delay or suspension of obligations exists as the result of an uncontrollable force, the Party claiming the delay or suspension shall proceed with reasonable diligence to remedy the conditions causing same and proceed with the performance of its obligations under this Agreement at the earliest practicable date.

## **11. HOLD HARMLESS PROVISION**

### **11.1 UniSource Energy Development Company**

UED shall indemnify and hold harmless UNS Gas from and against any claims for damage or injury to third persons or the property of third persons arising in any way out of the negligence or willful misconduct of UED in the construction, operation and maintenance of BMGS or the performance by UED of its obligations under this Agreement.

### **11.2 UNS Gas**

UNS Gas shall indemnify and hold harmless UED from and against any claims for damage or injury to third persons or the property of third persons arising in any way out of the negligence or willful misconduct of UNS Gas in the construction, operation and maintenance of any facilities of UNS Gas contemplated by this Agreement or the performance by UNS Gas of its obligations under this Agreement

## **12. ASSIGNMENT**

### **12.1 Right to Assign**

This Agreement and the Parties' interests hereunder shall not be assignable or transferable by any Party without the prior written consent of the other Party, which consent will not be unreasonably withheld. No consent shall be required in the event of (a) a transfer by either Party to any company that shall succeed by purchase, merger or consolidation or (b) other transfer of substantially all of such Party's assets or (c) a transfer by UED or UNS Gas to a wholly owned subsidiary or to any other affiliate, or (d) any assignment to any lender as collateral security for UED's obligations under any financing documents UED may enter into with such lenders. UNSG acknowledges that upon an event of default by UED under any financing documents relating to BMGS, any of the lenders may (but shall not be obligated to) assume, or cause its designee or a new lessee or purchaser of BMGS to assume, all of the interests, rights and obligations of UED thereafter arising under this Agreement. In the event that the rights and interests of UED in this Agreement and the BMGS are assumed, sold or transferred as hereinbefore provided, and the assuming party agrees in writing to be bound by and to assume, the terms and conditions hereof, UED shall be released from any liability hereunder. Notwithstanding any such assumption by any of the lenders or a designee thereof, UED shall not be released and discharged from and shall remain liable for any and all

obligations to UNS Gas arising or accruing hereunder prior to such assumption. The provisions of this Section 12.1 are for the benefit of the lenders as well as the Parties hereto, and shall be enforceable by the lenders as express third-party beneficiaries hereof. UNS Gas hereby agrees that none of the lenders shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of UED or shall have any obligation or liability to UNS Gas with respect to this Agreement except to the extent any of them become a party hereto pursuant to this Section 12.1 or Section 12.2 provided that the transferee agrees in writing to be bound by the terms of this Agreement. In the event of a transfer under clause (c), the transferor shall be released from liability under this Agreement if the transferee agrees in writing to be bound by the terms of this Agreement and the non-transferring Party is reasonably satisfied that the transferee is at least as creditworthy as the transferor.

## **12.2 Financing Liens**

Each of UNS Gas and UED may, without the approval of any Party, grant one or more mortgages (including one or more deeds of trust or indentures) on or security interests in its interest under this Agreement for the purposes of financing the construction, ownership and/or operation of BMGS, or if otherwise required to do so under the terms of a mortgage or indenture to which it is or becomes a party in connection with the general financing of its assets or operations.

## **12.3 Binding Effect**

In the event of assignment of this Agreement as herein provided, the terms and conditions of this Agreement shall be binding upon the assignees hereof. This Agreement shall also be binding upon the respective Parties, and their successors in the name or entity, on and after the effective date hereof.

## **13. INTERPRETATION**

### **13.1 Prior Agreements**

This Agreement constitutes the entire understanding of the Parties hereto and shall supersede all prior offers, negotiations and agreements.

### **13.2 Descriptive Headings**

All descriptive heading contained in this Agreement are intended only as guideline to the content hereof and shall not be binding with respect to the interpretation of any provision of this Agreement.

### **13.3 Conflicts**

To the extent of any inconsistency between the provisions of this Agreement and any schedule, rider or exhibit incorporated in this Agreement by reference or otherwise, or any of UNS Gas' Rules and Regulations, the provisions of this Agreement shall control.



## **14. REMEDIES**

### **14.1 Breach**

Subject to Section 8.2 with respect to payment defaults, in the event of a breach of any term or obligation of this Agreement by any Party that remains uncured within a reasonable period of time following notice of such breach, the non-defaulting Party shall have the right to terminate the Agreement or take any other action or seek any other remedy available in law or equity.

### **14.2 Dispute Resolution**

In the event of a dispute under this Agreement, the parties involved in this dispute will first seek to resolve the dispute through discussions between UNS Gas' representative and the appropriate UED representative. If the parties' representatives are unable to resolve the dispute within thirty (30) calendar days or longer if the parties mutually agree, the matter will be submitted for resolution to the Parties' representatives that have authority to act on behalf of their respective companies with respect to the subject matter of the dispute.

If such representatives are unable to resolve the dispute within thirty (30) calendar days after their initial meeting or conference (or within such longer time as may be mutually agreed upon by the respective officers), the parties may pursue any remedies available to them at law, in equity or under this Agreement to resolve the dispute, including alternate dispute resolution processes.

### **14.3 Limitation of Remedies**

In no event shall either Party be liable for indirect, special, incidental, consequential, or punitive damages of any kind, including without limitation, lost profits whether in contract, tort or strict liability.

### **14.4 Waiver**

Failure or delay on the part of any Party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof.

## **15. GOVERNING LAW**

This Agreement shall be interpreted, governed by and construed under the laws of the State of Arizona, without regard to the conflict of laws provision thereof.

All matters not stipulated in this Agreement shall be governed by the Rules and Regulations for service that are on file with the ACC and which may be modified from time to time.

**16. NO THIRD PARTY RIGHTS**

Except as otherwise specifically provided in Section 12 of this Agreement, the Parties do not intend to create any duty, covenant, obligation or undertaking to or to create any rights in or to grant any remedies to any third party as a beneficiary of this Agreement or of any of the rights and obligations established hereunder.

**17. AMENDMENT AND MODIFICATION**

No amendment or modification of this Agreement shall be valid and binding unless made in writing and signed by the Parties.

**18. SEVERABILITY**

In the event any provision or portion of a provision of this Agreement is invalid and/or unenforceable under present or future laws, or is declared void, invalid and/or unenforceable by a court of competent jurisdiction or an authorized governing entity, such provision or portion shall be deemed severed from this Agreement which shall otherwise remain in full force and effect.

**19. NOTICE**

For purposes of any notification contemplated to be given by or to either Party under this Agreement, the following shall constitute the appropriate address for delivery of such notice:

To UNS Gas:

Theresa Mead  
Lead Analyst, Pipeline System Planning  
P. O. Box 711, SC115  
Tucson, Arizona 85702

Gary A. Smith  
Vice President & General Manager  
2901 West Shamrell Blvd.  
Suite 110  
Flagstaff, Arizona 86001

To UniSource Energy Development Company:


Thomas A. McKenna  
Vice President  
4350 E. Irvington Rd.  
Tucson, Arizona 85714

UNS GAS - UED GAS TRANSPORTATION AGREEMENT


Secretary and Legal Counsel  
c/o UniSource Energy Corporation  
1 South Church Avenue, Suite 100  
Tucson, Arizona 85701

The Parties indicate their understanding of and agreement to all of the above terms and conditions by signing where designated below.

UNS GAS, INC.

By:   
Name: David G. Hutchens  
Title: Vice President  
Date: 12-12-07

UNISOURCE ENERGY DEVELOPMENT COMPANY

By:   
Name: THOMAS A. MCKENNA  
Title: VICE PRESIDENT  
Date: 12/13/07

**EXHIBIT A**

**RECEIPT POINT, DELIVERY POINT, PRESSURES AND QUANTITIES**

<u>Receipt Point(s)</u>	<u>Delivery Point(s)</u>	<u>Delivery Pressure</u>	<u>Atmospheric Pressure</u>	<u>Maximum Daily Quantity</u>
Transwestern POI No. 78646	UNS Gas Meter Station 6018192	600 psi, dependent upon TW line pressure	13.1 psi	38,400 Dth

EXHIBIT

"B"

CONFIDENTIAL

EXHIBIT

"C"

CONFIDENTIAL